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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/848,951	05/03/2001	Jeffrey A. Herman	83000.946C2/P2867C2/MG	8808
32291	7590	12/01/2005	EXAMINER	
MARTINE PENILLA & GENCARELLA, LLP 710 LAKEWAY DRIVE SUITE 200 SUNNYVALE, CA 94085				KENDALL, CHUCK O
ART UNIT		PAPER NUMBER		
2192				

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/848,951	HERMAN ET AL.	
	Examiner	Art Unit	
	Chuck O. Kendall	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 September 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 2-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 2-28 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 6/15/01 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

Detailed Action

1. This Office Action is the response to the communication received on September 09, 2005. Claims 2 – 28 have been amended and are pending.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 2 – 28 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 9 of U.S. Patent No. 6,366,876 B1 in view of Kinra et al. USPN 5,731,991.

Kinra as disclosed teaches obtaining a first set of file information of at least one reference file (4:22 – 24, see retrieve product data also refer to 7:50 – 54, for first and second products);

obtaining a second set of file information of at least one source file (4:22 – 24, see retrieve product data also refer to 7:50 – 54, for first and second products);

accessing data stored in said at least one reference file using said first set of file information, and data stored in said at least one source file using said second set of file information (4:20 – 25, see product data memory and product data);

obtaining data analysis criteria for analyzing said data stored in said at least one reference file against said data stored in said at least one source file (4:35 – 40, see criteria (3:60 – 4:5). Kinra doesn't expressly teach the data analysis criteria includes compatibility with an underlying platform defined by at least one of the reference file on which the data to be executed. However, Looney does teach this limitation in claim 9.

Therefore it would have been obvious to one ordinary skill in the art to combine Kinra and Looney because it would enable specific platforms to be compatible with the code.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 2 – 9,11 – 18, & 20 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinra et al. USPN 5,731,991 in view of Goiffon et al. USPN 6,226,792 B1.

Regarding claims 2,11 and 20, Kinra anticipates analyzing data comprising:
obtaining a first set of file information of at least one reference file (4:22 – 24, see retrieve product data also refer to 7:50 – 54, for first and second products);
obtaining a second set of file information of at least one source file (4:22 – 24, see retrieve product data also refer to 7:50 – 54, for first and second products);
accessing data stored in said at least one reference file using said first set of file information, and data stored in said at least one source file using said second set of file information (4:20 – 25, see product data memory and product data);

obtaining data analysis criteria for analyzing said data stored in said at least one reference file against said data stored in said at least one source file (4:35 – 40, see criteria (3:60 – 4:5). Kinra doesn't explicitly disclose the data analysis criteria includes compatibility with an underlying platform defined by at least one of the reference file on which the data to be executed. However, Goiffon in an analogous art and similar configuration discloses an Affinity Analyzer 122, that analyzes the relationship and determines which codes elements and modules are compatible or need to be modified to maintain compatibility (9:5 – 30). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Kinra and Goiffon, because it would have enable the programs to be compatible with the specific platform.

displaying results of said analyzing to a user via a data analysis interface (6:18 – 25).

Regarding claims 3, 12, and 21, the method of claim 2 wherein said obtaining said first set of file information further comprises displaying an interface in response to said user selecting a page tab (6:10 – 15, see selecting by user).

Regarding claims 4, 13 and 22 (original): The method of claim 3 wherein said displaying said interface further comprises displaying file information of a plurality of files from a plurality of file directories (see 5: 1 – 10, for data memory and environment data memory which are both stored and can be displayed also see 6:5 – 15, for plurality of file directories see different environments).

Regarding claims 5, 14 and 23, the method of claim 3 wherein said displaying said interface further comprises displaying a directory display area from which a user

can select a directory, and from which said user can select said at least one reference file from said directory (see 5: 1 – 10, for data memory and environment data memory which are both stored and can be displayed also see 6:5 – 15, and 20 – 30, shows displaying plurality of screens of product data and environment data, which are stored in memory).

Regarding claims 6,15, and 24, the method of claim 5 wherein said displaying said interface further comprises displaying, in a message display area, a message associated with said at least one reference file (6:10 – 17,for message, see select and prompting user, also see 9:40 – 42, for prompting user).

Regarding claims 7,16 and 25, the method of claim 2 wherein said obtaining said data analysis criteria further comprises displaying an analysis criteria selection area from which said user can select said data analysis criteria (9:64 – 10: 20, see selects selection for display and evaluation product data including criteria).

Regarding claims 8,17 and 26, the method of claim 2 wherein said analyzing said data further comprises applying at least one filter to said data stored in said at least one reference file and said data stored in said at least one source file using said data analysis criteria (for applying filter see criterion weighted values and evaluation (5: 1 – 15).

Regarding claims 9, 18 and 27, the method of claim 2 wherein said displaying said results further comprises displaying a table comprising a first column and a second column, said first column comprising analyzed ones of said at least one source file, and said second column comprising at least one result identifier associated with said

analyzed ones of said at least one source file (for first and second column, Examiner interprets to be equivalent to displaying comparison data for two products see, 6:13 – 18).

6. Claims 10,19 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kinra et al. USPN 5,731,991 in view of Goiffon et al. USPN6,226,792 B1 as applied in claims 2, 11 and 20 in view of Lerner USPN 5,526,257.

Regarding claims 10, 19 and 28, Kinra as modified discloses all the claimed limitations as applied above. The combination of Kinra and Goiffon doesn't explicitly displaying said table comprises displaying a third column comprising error identification information. However, Lerner in an analogous art does teach a very similar analytical system which does displaying error identification information (5:30 – 35, shows indicating success and the lack of thereof when evaluating result). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Kinra and Goiffon with Lerner because, being able to identify the result of an analysis is a general practice and would enable one to properly analyze data.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2192

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuck Kendall whose telephone number is 571-272-3698. The examiner can normally be reached on 10:00 am - 6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2192

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ck



TUAN DAM
SUPERVISORY PATENT EXAMINER